

**2003 DRAFTING REQUEST****Bill**Received: **11/18/2002**Received By: **mdsida**Wanted: **As time permits**

Identical to LRB:

For: **Kitty Rhoades (608) 266-1526**By/Representing: **Kevin**This file may be shown to any legislator: **NO**Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Rhoades@legis.state.wi.us**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Possession of methamphetamine

**Instructions:**

Make it a Class I felony for simple possession (regardless of whether it is a first or second offense)

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	mdsida 12/02/2002	jdyer 12/16/2002	pgreensl 12/16/2002	_____	amentkow 12/16/2002		S&L Crime
/1	mdsida 12/19/2002	jdyer 01/02/2003	pgreensl 01/02/2003	_____	lemery 01/02/2003	sbasford 01/10/2003 sbasford 01/10/2003	S&L Crime

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

<END>

→ At  
Intro.

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/I	mdsida 12/19/2002	jdyer 01/02/2003	pgreensl 01/02/2003	_____	lemery 01/02/2003		S&L Crime

FE Sent For:

**<END>**

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Subject: **Criminal Law - drugs**

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Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Possession of methamphetamine

**Instructions:**

Make it a Class H felony for simple possession (regardless of whether it is a first or second offense)

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	mdsida 12/02/2002	jdye 12/16/2002	pgreensl 12/16/2002	<del>1/3</del> 1/3	amentkow 12/16/2002		S&L Crime

FE Sent For:

&lt;END&gt;

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May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Rhoades@legis.state.wi.us**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Possession of methamphetamine

**Instructions:**

Make it a Class H felony for simple possession (regardless of whether it is a first or second offense)

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		1/12/02 jld	12/14/02 p8	12/16/02 <END> jld			

FE Sent For:



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0780/P1

MGD:.....

D Note

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

By 12/18

Gen

1 AN ACT ...; relating to: possession of methamphetamine and providing a penalty.

*Analysis by the Legislative Reference Bureau*

Current law prohibits the possession or the attempted possession of the controlled substance methamphetamine. A person who violates this prohibition on or after February 1, 2003, may be fined not more than \$5,000 or imprisoned for not more than one year in the county jail or both, unless, before committing the offense, the person had been convicted of any crime under any federal or state law relating to controlled substances. In that case, the person may be fined not more than \$10,000 or imprisoned for not more than three and a half years (with the term of confinement being served in a state prison, if the sentence imposed is for more than one year) or both. Under this bill, the maximum term of imprisonment for possession or attempted possession of methamphetamine is increased to six years. one-

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 961.41 (3g) (b) of the statutes, as affected by 2001 Wisconsin Act  
3 109, is amended to read:

1           961.41 (3g) (b) *Other drugs generally.* Except as provided in pars. (c), (d), (e)  
2           and (f) to (g), if the person possesses or attempts to possess a controlled substance  
3           or controlled substance analog, other than a controlled substance included in  
4           schedule I or II that is a narcotic drug or a controlled substance analog of a controlled  
5           substance included in schedule I or II that is a narcotic drug, the person is guilty of  
6           a misdemeanor, punishable under s. 939.61.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109.

7           **SECTION 2.** 961.41 (3g) (d) of the statutes, as affected by 2001 Wisconsin Act  
8           109, is amended to read:

9           961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person  
10          possesses or attempts to possess lysergic acid diethylamide, phencyclidine,  
11          amphctamine, ~~methamphetamine~~, <sup>✓</sup>methcathinone, psilocin or psilocybin, or a  
12          controlled substance analog of lysergic acid diethylamide, phencyclidine,  
13          amphetamine, <sup>✓</sup>methamphetamine, methcathinone, psilocin or psilocybin, the person  
14          may be fined not more than \$5,000 or imprisoned for not more than one year in the  
15          county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd  
16          or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd  
17          or subsequent offense if, prior to the offender's conviction of the offense, the offender  
18          has at any time been convicted of any felony or misdemeanor under this chapter or  
19          under any statute of the United States or of any state relating to controlled  
20          substances, controlled substance analogs, narcotic drugs, marijuana, or depressant,  
21          stimulant, or hallucinogenic drugs.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109.

22          **SECTION 3.** 961.41 (3g) (g) of the statutes is created to read:



1           961.41 (3g) (g) *Methamphetamine*. If a person possesses or attempts to possess  
2   methamphetamine or a controlled substance analog<sup>✓</sup> of methamphetamine, the  
3   person is guilty of a Class H<sup>✓</sup> felony.

4           **SECTION 4.** 961.472 (2)<sup>✓</sup> of the statutes, as affected by 2001 Wisconsin Act 109,  
5   is amended to read:

6           961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found  
7   guilty of possession or attempted possession of a controlled substance or controlled  
8   substance analog under s. 961.41 (3g) (am), (c), ~~or~~ (d), or (g)<sup>✓</sup>, the court shall order the  
9   person to comply with an assessment of the person's use of controlled substances.  
10   The court's order shall designate a facility that is operated by or pursuant to a  
11   contract with the county department established under s. 51.42 and that is certified  
12   by the department of health and family services to provide assessment services to  
13   perform the assessment and, if appropriate, to develop a proposed treatment plan.  
14   The court shall notify the person that noncompliance with the order limits the court's  
15   ability to determine whether the treatment option under s. 961.475 is appropriate.  
16   The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

NOTE: NOTE: Sub. (2) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:NOTE:

17   (2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance  
18   analog under s. 961.41 (3g) (a) 2, (c), (d) or (dm), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's  
19   order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department  
20   of health and family services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify  
21   the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also  
22   notify the person of the fee provisions under s. 46.03 (18) (fm).

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109.

23           **SECTION 5.** 961.48 (5) of the statutes is created to read:

24           961.48 (5) This section does not<sup>apply</sup> if the felony with which the person is charged  
25   under sub. (2m)<sup>✓</sup> is a felony under s. 961.41 (3g)<sup>✓</sup>.

26           **SECTION 6.** 961.55 (1) (d) 3.<sup>✓</sup> of the statutes, as affected by 2001 Wisconsin Act  
27   109, is amended to read:

1 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41

2 (3g) (b), ~~(c), (d), (e) or (f)~~ <sup>✓</sup> to (g); and

NOTE: NOTE: Subd. 3. is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads: NOTE:

3 3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), (c), (d), (dm), (e) or (f); and

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109.

4 SECTION 7. 971.365 (1) (c) <sup>✓</sup> of the statutes, as affected by 2001 Wisconsin Act 109,

5 is amended to read:

6 971.365 (1) (c) In any case under s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41

7 (3g) (dm), 1999 stats., or s. 961.41 (3g) (am), (c), (d), ~~or (e)~~ <sup>✓</sup> or (g) involving more than

8 one violation, all violations may be prosecuted as a single crime if the violations were

9 pursuant to a single intent and design.

NOTE: NOTE: Par. (c) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads: NOTE:

10 (c) In any case under s. 961.41 (3g) (a) 2., (c), (d), (dm) or (e) involving more than one violation, all violations may be prosecuted as a single crime if the violations

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 448; 1999 a. 48; 2001 a. 109.

12 SECTION 8. 971.365 (2) of the statutes, as affected by 2001 Wisconsin Act 109,

13 is amended to read:

14 971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent

15 prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m)

16 (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats.,

17 or s. 961.41 (1) (cm), (d), (e), (f), (g), or (h), (1m) (cm), (d), (e), (f), (g), or (h) or (3g) (am),

18 (c), (d), ~~or (e)~~ <sup>✓</sup> or (g) on which no evidence was received at the trial on the original

19 charge.

NOTE: NOTE: Sub. (2) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads: NOTE:

20 (2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 961.41 (1) (cm), (d), (e), (em), (f), (g) or (h), (1m)

21 (cm), (d), (e), (em), (f), (g) or (h) or (3g) (a) 2., (c), (d), (dm) or (e) on which no evidence was received at the trial on the original charge.

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 448; 1999 a. 48; 2001 a. 109.

22 SECTION 9. Effective date.

23 (1) This act takes effect on February 1, 2003, <sup>✓</sup> or on the day after publication,

24 whichever is later.

25 (END)

D-note

↓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0780/P1dn

MGD: r:...

date

Jld

Kevin:

1. In order to penalize second or subsequent offenses in the same way as first offenses, I had to address what appears to be a drafting error in 2001 Act 109. Under the current version of s. 961.48 (as well as under Act 109's revisions of it, which take effect on February 1, 2003), many second offenses are subject to higher penalties, so in keeping with your instructions I needed to create an exception in that statute for possession of methamphetamine. But, if that exception had only referred to possession of methamphetamine, it might support the position that s. 961.48 applies to other simple possession felonies — even those based on the application of a separate penalty enhancer for repeat offenses. See, e.g., s. 961.41 (3g) (c) (making the second offense for possession of cocaine a Class I felony). I believe that that result would be inconsistent with the intent of the Criminal Penalties Study Committee, which appears to have intended to provide higher penalties for second simple possession offenses within the possession statute itself and to have the higher penalties there apply only to three types of offenses (s. 961.41 (3g) (c), (d), and (e)). See Criminal Penalties Study Committee Final Report at 79, [http://www.doa.state.wi.us/docs\\_view2.asp?docid=42](http://www.doa.state.wi.us/docs_view2.asp?docid=42) at 98. Therefore, the new exception in s. 961.48 refers to all of the simple possession felonies. Wisconsin

2. In many respects, I treated the possession of methamphetamine under this bill in the same way that it had been treated by 1999 Wisconsin Act 48. For example, if a person is convicted of possessing methamphetamine, the bill requires the court to order an assessment of the person's use of controlled substances. See s. 961.472 (2) (which, until February 1, 2003, includes a cross-reference to s. 961.41 (3g) (dm) — the methamphetamine prohibition repealed by 2001 Wisconsin Act 109). Is that okay? check

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0780/P1dn  
MGD:jld:pg

December 16, 2002

Kevin:

1. In order to penalize second or subsequent offenses in the same way as first offenses, I had to address what appears to be a drafting error in 2001 Wisconsin Act 109. Under the current version of s. 961.48 (as well as under Act 109's revisions of it, which take effect on February 1, 2003), many second offenses are subject to higher penalties, so in keeping with your instructions I needed to create an exception in that statute for possession of methamphetamine. But, if that exception had only referred to possession of methamphetamine, it might support the position that s. 961.48 applies to other simple possession felonies — even those based on the application of a separate penalty enhancer for repeat offenses. *See, e.g.,* s. 961.41 (3g) (c) (making the second offense for possession of cocaine a Class I felony). I believe that that result would be inconsistent with the intent of the Criminal Penalties Study Committee, which appears to have intended to provide higher penalties for second simple possession offenses within the possession statute itself and to have the higher penalties there apply only to three types of offenses (s. 961.41 (3g) (c), (d), and (e)). *See* Criminal Penalties Study Committee Final Report at 79, [http://www.doa.state.wi.us/docs\\_view2.asp?docid=42](http://www.doa.state.wi.us/docs_view2.asp?docid=42) at 98. Therefore, the new exception in s. 961.48 refers to all of the simple possession felonies.

2. In many respects, I treated the possession of methamphetamine under this bill in the same way that it had been treated by 1999 Wisconsin Act 48. For example, if a person is convicted of possessing methamphetamine, the bill requires the court to order an assessment of the person's use of controlled substances. *See* s. 961.472 (2) (which, until February 1, 2003, includes a cross-reference to s. 961.41 (3g) (dm) — the methamphetamine prohibition repealed by 2001 Wisconsin Act 109). Is that okay?

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**Dsida, Michael**

---

**From:** Moore, Kevin  
**Sent:** Thursday, December 19, 2002 10:48 AM  
**To:** Dsida, Michael  
**Subject:** FW: Here it is...

Michael,

Here are some comments from the DA up in our district. Please let me know if there is any clarification that needs to be done...

Thanks,  
Kevin Moore  
Office of Rep. Kitty Rhoades  
Toll Free: 1-888-529-0030  
Fax: 1-608-282-3630

-----Original Message-----

**From:** Johnson, Eric G.  
**Sent:** Thursday, December 19, 2002 9:00 AM  
**To:** Moore, Kevin  
**Subject:** RE: Here it is...

Prior to the change it was a 2 year felony. I think a 6 year felony may be too high and harder to sell to other legislators. Two years is enough and keeps it at the felony status. Thanks.

Eric

## Dsida, Michael

---

**From:** Dsida, Michael  
**Sent:** Monday, December 09, 2002 10:00 AM  
**To:** Moore, Kevin  
**Subject:** RE: Meth Bill

Just to clarify, the bill would not rewrite the criminal code or chapter 961 or any significant part of it.

1. The exception which paragraph 1 of the drafter's note describes is one that is already required for methamphetamine, based on your request to have the second offense treated the same way as the first (although I'm not sure what you mean when you write, "Second and subsequent charges can be separate"). What I am proposing is simply drafting that exception to ensure that a person convicted of possession of cocaine, LSD, PCP, marijuana, and certain other drugs on a *third* offense is not subject to two separate penalty enhancers. I believe that this is consistent with the intent of the Criminal Penalties Study Committee. If, however, you want to permit those possession offenses to be subject to both the 2nd offense enhancer in s. 961.41 (3g) (c), (d), or (e) and the 2nd offense enhancer in s. 961.48, I can change the exception I have drafted so that it only covers methamphetamine.

2. The cross-references that I included would permit the court to order a drug assessment of a person convicted of possession of methamphetamine and permit multiple offenses to be prosecuted as a single crime. These cross-references are the same as those that were included in 1999 Wisconsin Act 48. If you want to eliminate either of them, just let me know.

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@state.legis.wi.us

-----Original Message-----

**From:** Moore, Kevin  
**Sent:** Thursday, December 05, 2002 5:17 PM  
**To:** Dsida, Michael  
**Subject:** Meth Bill

Michael,

I was wondering if you might have a minute tomorrow, Friday, to talk about your drafting notes. It is not our intent to completely re-write criminal code. We just want to get first possession of meth to be a felony. Second and subsequent charges can be separate.

Please let me know of a good time to call you on Friday so we can discuss this issue further.

Thanks for your time!

Kevin Moore  
Office of Rep. Kitty Rhoades  
Toll Free: 1-888-529-0030  
Fax: 1-608-282-3630

**Dsida, Michael**

---

**To:** Moore, Kevin  
**Subject:** Methamphetamine bill

Note what I added below (in bold), for the sake of completeness.

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Friday, December 20, 2002 10:23 AM  
**To:** Moore, Kevin  
**Subject:** RE: Here it is...

Effective 2/1/03, the maximum term of confinement to which a court will be able to sentence someone for a Class H felony will be 3 years. For a Class I felony, the maximum term of confinement will be 1.5 years.

For offenses committed before 2/1/03, the maximum term of confinement to which a court can sentence someone for possession of methamphetamine is 1.5 years **for a first offense and 3 years for a second offense.\*** (Under s. 973.01 (2) (b) 10., the term of confinement for an unclassified felony (which is what possession of methamphetamine is) may not exceed 75% of the maximum sentence length.)

**\* Under s. 961.48 (2), the penalty for a person convicted of a second possession offense is twice the penalty for a first offense.**

-----Original Message-----

**From:** Moore, Kevin  
**Sent:** Friday, December 20, 2002 10:14 AM  
**To:** Dsida, Michael  
**Subject:** RE: Here it is...

Michael,

Just as a reminder, if we were to go with the 6 year, how much of that would be time behind bars (maximum...)

Thanks,  
Kevin Moore  
Office of Rep. Kitty Rhoades  
Toll Free: 1-888-529-0030  
Fax: 1-608-282-3630

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Thursday, December 19, 2002 4:45 PM  
**To:** Moore, Kevin  
**Subject:** RE: Here it is...

The next lowest class of felony is Class I, for which the maximum sentence is 3.5 years.

There is nothing that precludes you from proposing that this offense be an unclassified felony with a maximum sentence of 2 years, but there would be a very good chance that the Joint Review Committee on Criminal Penalties would recommend classifying the offense, see s. 13.525 (b), given that there are only a couple of crimes that are (unintentionally) unclassified.

-----Original Message-----

**From:** Moore, Kevin  
**Sent:** Thursday, December 19, 2002 10:48 AM  
**To:** Dsida, Michael  
**Subject:** FW: Here it is...

Michael,

Here are some comments from the DA up in our district. Please let me know if there is any clarification that needs to be done...

Thanks,  
Kevin Moore  
Office of Rep. Kitty Rhoades  
Toll Free: 1-888-529-0030  
Fax: 1-608-282-3630

-----Original Message-----

**From:** Johnson, Eric G.  
**Sent:** Thursday, December 19, 2002 9:00 AM  
**To:** Moore, Kevin  
**Subject:** RE: Here it is...

Prior to the change it was a 2 year felony. I think a 6 year felony may be too high and harder to sell to other legislators. Two years is enough and keeps it at the felony status. Thanks.

Eric



**Dsida, Michael**

---

**From:** Schneider, Christian  
**Sent:** Monday, December 30, 2002 11:53 AM  
**To:** Dsida, Michael  
**Cc:** Moore, Kevin  
**Subject:** RE: More meth questions

Mike,

Thanks for the reply. Rather than have first possession be a Class H felony, we'd like to change that to a class I felony, which I believe increases it to 3.5 years in prison. We came to the conclusion that 6 years was probably a bit too stiff.

I don't know if this bill is being drafted as a Senate or Assembly bill, but Rep. Rhoades' office has agreed to this change. You can contact Kevin if you need verification. If it is being drafted solely as an Assembly bill, we'd like a Senate version as well.

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Monday, December 30, 2002 11:48 AM  
**To:** Schneider, Christian  
**Subject:** RE: More meth questions

See replies below.

-----Original Message-----

**From:** Schneider, Christian  
**Sent:** Friday, December 27, 2002 3:57 PM  
**To:** Dsida, Michael  
**Subject:** More meth questions

Mike,

We're just about ready to go ahead with our methamphetamino draft, but a couple of our DAs have questions. Can you give me a brief overview once again of what the historical penalty for first possession of meth is? I know what we are proposing and I know what it will be Feb. 1 of 2003, but what is it now? The maximum sentence length is 2 years and the maximum fine is \$5,000 for a first offense.

What was it before Truth in Sentencing? The original truth in sentencing bill (1997 Wisconsin Act 283) did not affect the penalty for first offenses. (That bill dealt almost exclusively with felony sentences.) The truth in sentencing provisions in 2001 Wisconsin Act 109 are the source of the changes that will take effect on 2/1/03.

Thanks.

Christian Schneider  
Policy Advisor  
Office of State Senator Sheila Harsdorf  
(608)266-7745  
christian.schneider@legis.state.wi.us



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0780/RIS

MGD:jld:pg

D Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reger

1 AN ACT *to amend* 961.41 (3g) (b), 961.41 (3g) (d), 961.472 (2), 961.55 (1) (d) 3.,  
2 971.365 (1) (c) and 971.365 (2); and *to create* 961.41 (3g) (g) and 961.48 (5) of  
3 the statutes; **relating to:** possession of methamphetamine and providing a  
4 penalty.

is guilty of a misdemeanor and

*Analysis by the Legislative Reference Bureau*

is guilty of a Class I  
felony, for which  
he or she

Current law prohibits the possession or the attempted possession of the controlled substance methamphetamine. A person who violates this prohibition on or after February 1, 2003, may be fined not more than \$5,000 or imprisoned for not more than one year in the county jail or both, unless, before committing the offense, the person had been convicted of any crime under any federal or state law relating to controlled substances. In that case, the person may be fined not more than \$10,000 or imprisoned for not more than three and one-half years (with the term of confinement being served in a state prison, if the sentence imposed is for more than one year) or both. Under this bill, the maximum term of imprisonment for possession or attempted possession of methamphetamine is increased to six years.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

on or after February 1, 2003, is guilty of a Class I felony, regardless of whether the person has any prior offenses

controlled substance

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       SECTION 1. 961.41 (3g) (b) of the statutes, as affected by 2001 Wisconsin Act  
2 109, is amended to read:

3       961.41 (3g) (b) *Other drugs generally.* Except as provided in pars. (c), (d), (e)  
4 and (f) to (g), if the person possesses or attempts to possess a controlled substance  
5 or controlled substance analog, other than a controlled substance included in  
6 schedule I or II that is a narcotic drug or a controlled substance analog of a controlled  
7 substance included in schedule I or II that is a narcotic drug, the person is guilty of  
8 a misdemeanor, punishable under s. 939.61.

9       SECTION 2. 961.41 (3g) (d) of the statutes, as affected by 2001 Wisconsin Act  
10 109, is amended to read:

11       961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person  
12 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,  
13 amphetamine, ~~methamphetamine~~, methcathinone, psilocin or psilocybin, or a  
14 controlled substance analog of lysergic acid diethylamide, phencyclidine,  
15 amphetamine, ~~methamphetamine~~, methcathinone, psilocin or psilocybin, the person  
16 may be fined not more than \$5,000 or imprisoned for not more than one year in the  
17 county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd  
18 or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd  
19 or subsequent offense if, prior to the offender's conviction of the offense, the offender  
20 has at any time been convicted of any felony or misdemeanor under this chapter or  
21 under any statute of the United States or of any state relating to controlled

1 substances, controlled substance analogs, narcotic drugs, marijuana, or depressant,  
2 stimulant, or hallucinogenic drugs.

3 **SECTION 3.** 961.41 (3g) (g) of the statutes is created to read:

4 961.41 (3g) (g) *Methamphetamine*. If a person possesses or attempts to possess  
5 methamphetamine or a controlled substance analog of methamphetamine, the  
6 person is guilty of a Class ~~II~~ <sup>(I)</sup> felony. ✓

7 **SECTION 4.** 961.472 (2) of the statutes, as affected by 2001 Wisconsin Act 109,  
8 is amended to read:

9 961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found  
10 guilty of possession or attempted possession of a controlled substance or controlled  
11 substance analog under s. 961.41 (3g) (am), (c), ~~or~~ (d), or (g), the court shall order the  
12 person to comply with an assessment of the person's use of controlled substances.  
13 The court's order shall designate a facility that is operated by or pursuant to a  
14 contract with the county department established under s. 51.42 and that is certified  
15 by the department of health and family services to provide assessment services to  
16 perform the assessment and, if appropriate, to develop a proposed treatment plan.  
17 The court shall notify the person that noncompliance with the order limits the court's  
18 ability to determine whether the treatment option under s. 961.475 is appropriate.  
19 The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

20 **SECTION 5.** 961.48 (5) of the statutes is created to read:

21 961.48 (5) This section does not apply if ~~the felony with which~~ the person is  
22 <sup>presently</sup> charged ~~under sub. (2m)~~ <sup>with</sup> is a felony under s. 961.41 (3g) ✓ (c), (d), (e), or (g)  
23 <sup>^</sup> <sup>^</sup>

24 **SECTION 6.** 961.55 (1) (d) 3. of the statutes, as affected by 2001 Wisconsin Act  
109, is amended to read:

961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41  
(3g) ~~(b), (c), (d), (e) or (f) to (g)~~; and

**SECTION 7.** 971.365 (1) (c) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

971.365 (1) (c) In any case under s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats., or s. 961.41 (3g) (am), (c), (d), ~~or (e)~~, or (g) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

**SECTION 8.** 971.365 (2) of the statutes, as affected by 2001 Wisconsin Act 109,  
is amended to read:

971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m) (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats., or s. 961.41 (1) (cm), (d), (e), (f), (g), or (h), (1m) (cm), (d), (e), (f), (g), or (h) or (3g) (am), (c), (d), ~~or (e),~~ or (g) on which no evidence was received at the trial on the original charge.

**SECTION 9. Effective date.**

(1) This act takes effect on February 1, 2003, or on the day after publication, whichever is later.

**(END)**

D-note  
↓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0780/1dn

MGD: <sup>1</sup>

date

jld

Kevin:

I looked again at the issue that I raised in the first point of my drafter's note of December 16, and I realized that I probably should have addressed it in a way that would have only covered the drugs described in s. 961.41 (3g) (c), (d), and (e).<sup>✓</sup> In other words, I should not have affected second offenses involving possession of Schedule I or II narcotic drugs or the date rape drugs covered by s. 961.41 (3g) (f).<sup>✓</sup> This version of the bill maintains the penalty provided under current law for those second offenses.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0780/1dn  
MGD:jld:pg

January 2, 2003

Kevin:

I looked again at the issue that I raised in the first point of my drafter's note of December 16, and I realized that I probably should have addressed it in a way that would have only covered the drugs described in s. 961.41 (3g) (c), (d), and (e). In other words, I should not have affected second offenses involving possession of Schedule I or II narcotic drugs or the date rape drugs covered by s. 961.41 (3g) (f). This version of the bill maintains the penalty provided under current law for those second offenses.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**Mentkowski, Annie**

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**From:** Dsida, Michael  
**Sent:** Thursday, January 09, 2003 4:27 PM  
**To:** LRB.Legal  
**Subject:** please jacket -0780 for rep. rhoades.

thanks.

Mike Dsida  
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608/266-9867  
michael.dsida@state.legis.wi.us